Supreme Court, U.S.
FILED
JUN 17 1993
CLERK OF THE COURT

NO. 91-1950

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

AMERICAN DREDGING COMPANY
Petitioner,

vs.

WILLIAM ROBERT MILLER
Respondent.

On Writ of Certiorari To
The Supreme Court of the State of Louisiana

BRIEF OF PETITIONER, AMERICAN DREDGING COMPANY

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QUESTION PRESENTED

The question presented is whether the doctrine of *forum non conveniens* as applied in admiralty is applicable to maritime claims filed in state courts pursuant to the "savings to suitors" clause.

LIST OF PARTIES

The parties to the action are William Robert Miller and American Dredging Company.

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could apply its *forum non conveniens* rule in the context of a FELA claim brought in a Missouri state court. In finding that the state rule could apply, this Court stated:

> According to its own notions of procedural policy, a State may reject, as it may accept, the doctrine of [*forum non conveniens*] for all causes of action begun in its courts. If denial of a motion to dismiss an action under the Federal Employers' Liability Act is rested on such a general local practice, no federal issue comes into play. 340 U.S. at 3.

Since the Jones Act is based upon and incorporates by reference FELA, this Court's ruling in *Mayfield* should answer the only issue that could possibly be presented by granting of the writ in this case. *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S. Ct. 246, 250 (1942).

2. Louisiana State Court should be allowed administrative independence in applying its own procedural *forum non conveniens* rules in the "reverse-*Erie*" situation as the federal courts are allowed in *Erie* cases.

States courts hearing maritime cases pursuant to the "savings-to-suitors" clause of 28 U.S.C.A. § 1333 must follow the federal admiralty courts on matters of substantive law but are free to apply their own rules of procedure. *Offshore Logistics v. Tallentier*, 477 U.S. 207 (1986); *Red Cross Line v. Atlantic Fruit Company*, 264 U.S. 109 (1924); *Laverne v. Western Co. of North America*, 371 So. 2d 807 (La. 1979). This is the black-letter rule for such cases,

and no one disputes it. This system mirrors the constraints imposed by *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817 (1938) on federal courts hearing diversity cases. Consequently, it has come to be known as the "reverse-*Erie*" doctrine. This Court has repeatedly approved the "reverse-*Erie*" concept and label. *Chick Kam Choo v. Exxon Corporation*, 486 U.S. 140, 149, 108 S. Ct. 1684, 1691 (1988); *Offshore Logistics, Inc. v. Tallentier*, 477 U.S. 107, 23, 106 S. Ct. 2485, 2494 (1986).

Under the "reverse-*Erie*" approach state courts are not obliged to follow the *forum non conveniens* practices of federal admiralty courts, because *forum non conveniens* is plainly a matter of procedural law. This Court explicitly held that *forum non conveniens* is procedural, not substantive, in *Missouri v. Mayfield*, 340 U.S. 1, 71 S. Ct. 1 (1950).

In *In Re: Air Crash Disaster near New Orleans, La.*, 821 F. 2d 1147 (5th Cir. 1987), *vacated on other grounds and remanded* 109 S. Ct. 1928 (1988), reinstated in pertinent part, 883 F. 2d 17 (5th Cir. 1989), the Court was faced with the issue of whether to apply the state or federal *forum non conveniens* law in a diversity action. The court held that a federal court in diversity was required to apply the federal *forum non conveniens* law:

> We hold that the interest of the federal forum in self-regulation, in administrative independence, and in self-management are more important than the disruption of uniformity created by applying federal *forum non conveniens* in diversity cases. 821 F. 2d at 1159.

The Eleventh Circuit reached a similar result in *Sibaja v. Dow Chemical Co.*, 757 F. 2d 1215 (1985), in finding that

forum non conveniens was not a part of the state substantive law for *Erie* purposes:

> The *forum non conveniens* doctrine is a rule of venue, not a rule of decision. . . . in contrast, "rules of decision" are the "substantive" law of the state, the "legal rule [which] determine the outcome of a litigation". 757 F. 2d at 1219.

Under the so-called "reverse-*Erie*" doctrine approved by this Court, these cases suggest that the *forum non conveniens* doctrine should not be considered part of the substantive federal law in a "savings-to-suitors" case, anymore than the doctrine is part of the state substantive law for *Erie* purposes. See *Speck, Forum Non Conveniens and Choice of Law and Admiralty: Time for an Overhaul*, 18 J. of Marl. L. & Comp. 1985, 1999 (1987). Further, the interest of self-regulation, administrative independence, and self-management which have influenced the federal courts to apply federal *forum non conveniens* in diversity cases are equally applicable to the state court's interest in applying the state *forum non conveniens* rule in Jones Act-general maritime law cases.

The peculiar nature of *forum non conveniens* makes the "savings-to-suitors" clause equally applicable to state statutes such as Article 123C of the Louisiana Code of Civil Procedure. This clause not only empowers state courts to hear and resolve maritime disputes, but also allows state courts to favor maritime suitors with whatever remedies they so choose. This is vitally important to the concept of Federalism. In this vain, it is noteworthy that this Court has held that general maritime law claims do not "arise" under federal law for the purposes of

removal. See *Romero v. International Terminals Operating Co.*, 358 U.S. 354, 79 S. Ct. 468.

The two most often cited private interest factors in support of a *forum non conveniens* dismissal are the administrative difficulties flowing from court congestion and the unfairness of burdening citizens in an unrelated forum with jury duty. *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 67 S. Ct. 839 (1947). It is obviously quite different where a state legislature, as the voice of the people, has enacted a statute which specifically abrogates *forum non conveniens* as a defense. In other words, the people of the State of Louisiana, by enactment of Article 123C of the Louisiana Code of Civil Procedure, have explicitly undertaken the additional burdens which may be imposed upon them by having such claims litigated in the courts of the State of Louisiana. Yet, since the people of Louisiana have accepted this additional burden, then Federalism and Comity should prevent the federal judiciary from imposing their contrary will upon the residents of that State. *Albany Insurance v. Anh Thi Kiew*, 927 F. 2d 882 (5th Cir. 1991).

By denying ADC's writ of certiorari to the decision from the Louisiana Supreme Court in this matter, this Court can leave intact the administrative independence of the Louisiana state courts and legislature to apply their procedural rules as they see fit to Jones Act or general maritime law cases that are filed in Louisiana state courts pursuant to the "savings-to-suitors" clause.

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CONCLUSION

The application for writs of certiorari of ADC can be dismissed by applying this Court's decision in *Missouri v. Mayfield, supra,* to this matter. The only issue which can truly be addressed by granting writs in this matter is whether or not the States are free to apply their own notions of procedural policy, which includes allowing the State to accept or reject the *forum non conveniens* doctrine for all causes of actions begun in its courts. Because the Jones Act incorporates by specific reference all of the Federal Employers' Liability Act, then *Mayfield* is dispositive of the only issue that can be presented to this Court, as this Court held in *Mayfield* that the State courts are free to accept or reject this doctrine.

Further, by denying the writ of ADC, this Court can leave intact the administrative independence which allows the maritime and Jones Act cases to be brought and litigated in state courts, this will allow these cases to continue to be heard by the non-specialized state court judges, a concept that was so fundamental in Justice Frankfurter's decision in *Romero.* Justice Frankfurter stated:

> The role of the States in the development of maritime law is a role whose significance is rooted in the Judiciary Act of 1789 and the decisions of this Court. *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 372, 79 S. Ct. 468, 480.

Therefore, William Robert Miller respectfully submits that ADC's writ of certiorari be denied.

Respectfully submitted,

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